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BY HAND

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Reply Comments of Local Governments
on Consumer Protection and Customer Service
MM Docket No. 92-263

Dear Ms. Searcy:

Enclosed please find, on behalf of the National Association of Telecommunications Officers and Advisors, National League of Cities, United States Conference of Mayors and the National Association of Counties ("Local Governments"), an original and nine copies of reply comments to be filed with the Commission as part of the Commission's proceeding in MM Docket No. 92-263.

Any questions regarding the submission should be referred to the undersigned.

Thank you.

Sincerely yours,

Caroline Little

Caroline H. Little

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Implementation of Section 8 of)
the Cable Television Consumer)
Protection and Competition)
Act of 1992)

MM Docket No. 92-263

Consumer Protection and Customer)
Service)

REPLY COMMENTS OF THE NATIONAL ASSOCIATION
OF TELECOMMUNICATIONS OFFICERS AND ADVISORS,
NATIONAL LEAGUE OF CITIES, UNITED STATES
CONFERENCE OF MAYORS, AND THE NATIONAL
ASSOCIATION OF COUNTIES

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Date: January 26, 1993

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SUMMARY

The National Association of Telecommunications Officers and Advisors, National League of Cities, United States Conference of Mayors and the National Association of Counties (collectively, "Local Governments") are submitting these reply comments to respond to several parties who have commented in this proceeding. Local Governments believe that: (1) the Commission's rules should be self-executing and there should not be a requirement that they be adopted by a franchising authority in order to become effective; (2) a franchising authority may impose upon a cable operator customer service standards that are more stringent than, or different from, the Commission-established standards; (3) a franchising authority should be the entity responsible for enforcing the Commission standards, and may establish enforcement mechanisms immediately -- it does not have to wait until the renewal of the franchise; and (4) the standards recommended by the National Cable Television Association ("NCTA") are not the appropriate standards for the Commission to adopt.

The only reasonable interpretation of the statutory language of Section 8 of the 1992 Act is that Congress intended to ensure that a reasonable level of customer service for cable subscribers is available on a

national basis. Local Governments believe that it is crucial to ensure Congress' goal is realized by making the Commission-established standards self-executing.

Local Governments also wish to respond in these comments to several parties' comments regarding enforcement of the Commission-established standards. Nearly all of the commenters, including several multiple system operators ("MSOs") and local franchising authorities, as well as Local Governments, agree that local franchising authorities should be the entity responsible for enforcing the Commission-established standards. However, the parties disagree as to the nature and extent of such enforcement authority. Local Governments believe that such enforcement authority should be immediately applicable to current franchise agreements.

In addition, the standards adopted by the Commission should include some mechanisms whereby cable consumers receive immediate relief in the event a cable operator fails to meet its obligations under the standards (e.g., credits for the cable operator's failure to keep appointments, service outages, etc.). Such provisions would also encourage the cable operators to comply with the standards.

The last section of these reply comments discusses specifically why the NCTA standards are not

the appropriate standards, using several standards as examples. Local Governments urge the Commission not to adopt the NCTA standards because they are vague, not stringent enough and do not address several key areas. The last section also suggests an appropriate set of consumer protection standards that the Commission should adopt. The complete text of such standards recommended by the Local Governments, including definitions, is set forth in Attachment A to these reply comments.

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In the Matter of)

Implementation of Section 8 of)
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MM Docket No. 92-263

Consumer Protection and Customer)
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TO: The Commission

REPLY COMMENTS OF THE NATIONAL ASSOCIATION
OF TELECOMMUNICATIONS OFFICERS AND ADVISORS,
NATIONAL LEAGUE OF CITIES, UNITED STATES
CONFERENCE OF MAYORS, AND THE NATIONAL
ASSOCIATION OF COUNTIES

The National Association of Telecommunications
Officers and Advisors, the National League of Cities,
the United States Conference of Mayors, and the National
Association of Counties (collectively, "Local Govern-
ments") submit these reply comments in the above-
captioned proceeding.

I. INTRODUCTION

In this proceeding, the Federal Communications
Commission ("FCC" or "Commission") seeks comment on the
adoption and implementation of Section 8 of the Cable

Television Consumer Protection and Competition Act of 1992 ("1992 Act"). Section 8 requires, among other things, that the Commission establish standards governing cable customer service within 180 days after enactment of the 1992 Act.

As stated in their initial comments in this proceeding, Local Governments believe that the FCC should adopt rules which will ensure adequate customer service throughout the country. Section 8 plainly intends for the Commission-established rules to be self-executing, and franchising authorities should not be required to take any action to implement the rules. The general rule that the Commission-established standards will apply to all cable operators should be subject to three exceptions: (1) where a franchising authority determines to waive one or more of the FCC standards in favor of less stringent standards; (2) where the franchising authority has more stringent customer service standards already in place; or (3) where a franchising authority exercises its right to promulgate more stringent standards or standards not addressed by the FCC standards.

Franchising authorities would be responsible for enforcing the Commission-established standards. Upon request, the franchising authority would submit written

reports, in a succinct format, to the Commission describing the local enforcement actions. The Commission, if necessary, could act as a final arbiter of disputes between franchising authorities and cable operators.

Local Governments wish to respond in these comments to several parties' comments in four key areas. First, the Commission established standards must be self-executing. That result is mandated by the statutory language of Section 8 of the 1992 Act as well as the legislative history. Second, a franchising authority may impose customer service standards that are more stringent than, or different from, the Commission-established standards. Third, franchising authorities are the appropriate entities to enforce the Commission standards. Fourth, the NCTA standards are not the appropriate standards, because they are vague, not stringent enough and do not address several key areas. The last section describes what Local Governments believe are the appropriate consumer protection standards that the Commission should adopt. The complete text of such standards recommended by Local Governments, including definitions, is set forth in Attachment A hereto.

II. DISCUSSION

A. The FCC Rules Should be Self-Executing.

Several of the cable operators commenting in this proceeding suggest that the Commission-established standards should not be self-executing.¹ Instead, they argue, franchising authorities should be required to take actions to affirmatively adopt the Commission-established standards. In addition, several of the cable operators have argued for lengthy transition periods for the standards to become effective.²

Section 8 of the 1992 Act requires the Commission to establish a national level of customer service. The legislative history of the 1992 Act is replete with testimony from cable subscribers, consumer groups and franchising authorities documenting customer service problems -- problems that are evident in both large and small cable systems. If franchising authorities were

¹ See comments of Tele-Communications, Inc., dated January 11, 1993 at 17; comments of Continental Cablevision, Inc., dated January 8, 1993 at 44; comments of Time Warner Entertainment Company, L.P., dated January 11, 1993 at 9; and comments of Comcast Corporation, Cox Cable Communications, Inc., and Jones Intercable, Inc., dated January 11, 1993 at 5.

² See comments of Tele-Communications Inc., dated January 11, 1993 at 17-18; and comments of Comcast Corporation, Cox Communications, Inc. and Jones Intercable, dated January 11, 1993 at 4-5.

required to take affirmative action to adopt Commission-established standards, they would undoubtedly face a barrage of piecemeal cable industry challenges, on a jurisdiction-by-jurisdiction basis. Such challenges would not only delay the protection that Congress intended to provide to cable consumers, but would also undermine the Congressional goals of requiring national customer service standards. In addition, it would unnecessarily waste local resources.

That the Commission-established rules should be self-executing is consistent with the application of other rules and regulations promulgated by the Commission. For example, franchising authorities are not required to adopt and implement rules and regulations established by the Commission governing equal employment opportunity requirements; instead, the rules are automatically applicable to the cable operator. Local Governments are not aware of any current rules regulating cable operators pursuant to the Cable Communications Policy Act of 1984 ("1984 Act") or the 1992 Act which require the FCC to establish rules and then require that such rules must be adopted by a franchising authority in order to be applicable to cable

operators. Thus, it is not necessary for Section 8 to specifically require that the Commission's rules be self-executing.

In addition, a lengthy transition for the Commission rules to apply to cable operators will undermine Congress' intent in passing the 1992 Act. Congress established numerous short deadlines for Commission implementation of the new law, precisely because many consumers require immediate relief from monopolistic practices. While those deadlines have placed a heavy burden on all parties, especially the Commission, they reflect Congress' desire to expedite assistance to the public. As noted above, customer service abuses have plagued cable consumers, and there should be no delay in requiring reasonable service.

If there is a specific Commission standard or standards that a cable operator finds is too onerous to be complied with on the effective date of the rules, a franchising authority may grant, based upon a showing of need by the cable operator, a waiver of the applicability of specific rules. Any such waiver should not exceed one year. Such an approach would provide flexibility, would address a cable operator's specific needs on a standard-by-standard basis, and would not compromise the purposes of the 1992 Act.

B. Franchising Authorities May Establish and Enforce Customer Service Standards.

As Local Governments stated in their initial comments in this proceeding, the Commission's rules should reflect the statutory language permitting franchising authorities to impose standards that (1) exceed the Commission-established standards; and (2) that are not addressed by Commission-established standards. As Section 8 of the 1992 Act makes clear, these rights complement the Commission's responsibility to establish federal standards, and local franchising authorities do not need to waive the Commission's standards to establish additional safeguards important for a particular community.

Several cable operators commenting in this proceeding either ignore or misconstrue the meaning of Section 8 of the 1992 Act. Some cable operators contend that Section 8 does not give franchising authorities the power to impose customer service standards that exceed the Commission-established standards.³ However, the plain language of the 1992 Act allows franchising authorities to impose more stringent or different standards on cable operators. Section 632(a) of the

³ See comments of Time Warner Entertainment L.P., dated January 11, 1993 at 12. See also comments of the National Cable Television Association, dated January 11, 1993 at 21.

Communications Act of 1934 ("1934 Act"), as amended by the 1992 Act, provides that a franchising authority may "establish and enforce customer service requirements of the cable operator...." In addition, Section 632(c) of the 1992 Act allows a franchising authority and cable operator to agree to customer service standards that exceed the standards established by the Commission under Section 632(b). It also allows the establishment and enforcement of municipal and state laws that exceed the standards set by the Commission. Apart from the independent rights in Section 632(a) and 632(c), Section 632(b) requires the Commission to establish standards "by which cable operators may fulfill their customer service requirements" (emphasis supplied).

Several of the commenters refer to the permissive language -- "may" -- in Section 632(b) as support for the argument that the Commission-established standards must be adopted by the franchising authority in order to be applicable to a cable operator. Such an interpretation misconstrues the statute. Section 632(b) must be read in the context of Section 8: if a franchising authority does not exercise its right to establish consumer protection standards that exceed the Commission's standards, then the Commission-established standards pursuant to Section 632(b) are applicable to

the cable operator. In short, a cable operator "may" fulfill its customer service obligations under Section 632(b) of the Communications Act only if the local authority does not require more. That is the framework established by Congress to protect consumers.

The right of franchising authorities to establish and enforce customer service requirements was established in the 1984 Act. The 1992 Act reaffirms that right.⁴ Sections 632(a) and 632(c)(2) make clear that state and local governments are free to impose and enforce customer service requirements either pursuant to a cable television franchise or law or regulation.⁵ To suggest, as one cable operator did in its comments, that Section 632(a) of the 1992 Act provides a "second step" by permitting the franchising authority to adopt and

⁴ Whereas the 1984 Act provided that a franchising authority could require "as part of a franchise . . . provisions for the enforcement of . . . customer service requirements of the cable operator . . .," the language in the 1992 Act, significantly, is not limited by any requirement that such provisions be a part of the franchise. Instead, the language in the 1992 Act unequivocally provides that a franchising authority may establish and enforce customer service requirements, without qualification.

⁵ Local Governments also reject the argument that customer service ordinances must be of general applicability pursuant to Section 632(c). See comments of Continental Cablevision, Inc., dated January 8, 1993 at 50. If Congress had intended that, it would have so provided.

enforce the Commission standards established pursuant to Section 632(b), misreads the statute.⁶

Congress recognized that customer service was a significant and widespread problem. The regulatory regime it created in 1992 -- Commission setting adequate standards and local franchising authorities enforcing them -- rises plainly from the statutory language. Moreover, even if there were some ambiguity, any interpretation of the statute that seeks to limit the ability of franchising authorities to improve customer service is wholly inconsistent with the legislative history of the 1992 Cable Act.

C. Franchising Authorities are the Appropriate Entities to Enforce the Commission Standards.

Nearly all of the initial commenters agree that local franchising authorities are the appropriate entities to enforce the Commission-established standards. However, many MSOs commenting in the proceeding, while stating that enforcement of the standards is appropriate at the local level, do not

⁶ See comments of Continental Cablevision, Inc., dated January 8, 1993 at 44. Similarly, Time Warner suggests that Section 632 (a)(1) should be read as an "enabling statute" allowing franchise authorities to adopt customer service standards. Comments of Time Warner Entertainment, L.P., dated January 11, 1993 at 12.

appear to be willing to provide any meaningful mechanisms to ensure such enforcement.

For example, several cable operators state that franchising authorities should be limited to enforcement procedures that already exist in franchises, enforcement procedures that are agreed upon by the cable operator and the franchising authority, or existing renewal provisions in Section 626 of the 1984 Act.⁷

It is inconsistent with the statute and illogical to require franchising authorities to rely on existing franchise provisions to enforce the new standards set by the Commission. Many existing franchise agreements do not contain consumer protection requirements -- and therefore do not contain any relevant enforcement provisions. In order to be effective and fair, any enforcement mechanism must be commensurate with, and measured in accordance with, the harm done. In order to effectively enforce the Commission's standards, a franchising authority must await final promulgation of the rules and then fashion appropriate remedies. Moreover, a requirement that franchising authorities must rely on existing franchise provisions to enforce the Commission-established standards misconstrues the

⁷ See comments on Time Warner Entertainment Company, L.P., dated January 11, 1993 at 14-15.

statute. As discussed in Section II.B of these comments, Sections 632(a) and 632(c) provide an independent enforcement mechanism to franchising authorities.

Similarly, the renewal provisions of the 1984 Act are not an appropriate enforcement mechanism for ongoing breaches of the Commission-established standards. Often cable television franchises are granted for ten or more years. Cable consumers must not be required to wait years in order to receive better cable television service, and then, only if the franchising authority is prepared to go through the enormous expense of a formal renewal proceeding. Such an interpretation of Section 8 would stand Section 8 on its head: Congress did not intend to delay the improvement of customer service until the franchise is being considered for renewal. The 1992 Act instead clarifies Congress' intent that franchising authorities may promulgate and implement consumer protection standards at any time.

Local Governments believe that it is appropriate and desirable for franchising authorities to implement reasonable enforcement mechanisms to ensure that cable operators comply with Commission-established standards.⁸

⁸ One effective tool for enforcement of the Commission's standards will be the ability to obtain the
[Footnote continued on next page]

Local Governments are not suggesting they should be, nor do they desire to be, in the business of resolving each customer complaint; obviously the cable operator bears the first line of responsibility for dealing with complaints about its service. The standards recommended by Local Governments and set forth hereto as Attachment A, by requiring routine disclosure of rates and charges, billing procedures, service and outage standards and missed appointment remedies, will educate subscribers. By doing so, cable subscribers will be in a better position to protect their rights. However, local franchising authorities must be entitled to implement appropriate mechanisms to ensure that consumers in their respective jurisdictions obtain a reasonable level of customer service. In short, Local Governments recommend that the Commission establish a set of consumer

[Footnote continued from previous page]
names of persons filing complaints. In the Commission's most recent Order governing technical standards for cable television, the Commission concluded that the privacy provisions in the 1992 Cable Act prohibit local franchising authorities from obtaining the names of persons filing technical complaints (although franchising authorities may obtain aggregate data). See Memorandum Opinion and Order in MM Dockets Nos. 91-169 and 85-38, (released November 24, 1992) at 14-15. Local Governments had argued in that proceeding, and continue to believe, that Section 631 does not prohibit franchising authorities from obtaining such information. Local Governments urge the Commission not to prohibit access to customer service complaints by a franchising authority.

protection standards that will ensure a reasonable level of customer service on a nationwide basis, which include provisions to make a consumer whole if the level of service is not met.

Without adequate enforcement mechanisms, the Commission's standards will be meaningless. To suggest that franchising authorities may not enforce those standards -- except by means of existing franchise provisions, negotiation with cable operators, or renewal of the franchise -- ignores the interests of the persons meant to benefit from the Commission-established standards: the nation's cable consumers. The standards should contain appropriate mechanisms whereby cable subscribers are provided relief in the event the cable operator fails to satisfy certain customer service obligations (e.g., failure to keep installation and service appointments and failure to correct outages). As described in Section II.D below, this is one of the critical areas in which the NCTA standards are lacking. Local Governments also believe that such provisions would provide incentives to cable operators to comply with the Commission's standards.

D. Customer Service Standards Recommended by
Local Governments

Attached to these reply comments as Attachment A is a set of customer service standards, including definitions, which Local Governments submit as a model for the standards the Commission must adopt pursuant to Section 8 (referred to herein as the "Recommended Standards"). The Recommended Standards were summarized in Local Governments' initial comments and derive from a variety of provisions of existing franchise agreements negotiated between cable operators and franchising authorities for both large and small cable systems. Using their collective experience and expertise as the governmental body closest to consumers, Local Governments tailored these provisions to ensure general applicability to a range of cable systems and an appropriate balance between the needs of consumers and cable operators. Local Governments believe that the Recommended Standards, which emphasize disclosure to consumers of rates and charges, subscriber rights, billing procedures, and missed appointment remedies, will enable subscribers to take an active role in ensuring that they receive a reasonable level of service.

The Recommended Standards differ from the NCTA standards in three key respects: they are more specific; they are generally -- although not always -- more stringent; and they cover several areas not addressed by the NCTA standards. The following subsections discuss the main areas addressed by the NCTA standards -- office and telephone availability, installations, outages and service calls and communications, and bills and refunds. The discussion also includes a comparison of certain provisions of the NCTA standards, standards recommended by other parties commenting in this proceeding and the Recommended Standards.

1. Office and Telephone Availability

a. Response to Telephone Inquiries: Hours

The NCTA standard in this area provides that company representatives must be available to respond to customer telephone inquiries Monday through Friday during normal business hours, and, based on community needs, cable operators will staff telephones for supplemental hours on weekdays and/or weekends.

This NCTA standard is unworkable for several reasons. It does not account for the fact, as the Commission notes in the Notice of Proposed Rule Making ("NPRM"), that the highest levels of television viewing

occur outside of "normal business hours." It does not adequately address the difficulties that consumers have had in communicating with their local cable operators, which has been an area of consumer discontent as the Commission notes in the NPRM, citing the legislative history of the 1992 Act.⁹ Two surveys conducted in the last several years indicate the serious problems subscribers experience in this area. A Consumer Reports survey of 200,000 cable subscribers published in 1991 reported that "getting through [to the cable operator] proved tough nearly half the time".¹⁰ Similarly, the results of survey conducted of New York City residents of Manhattan in December 1989 indicated serious problems in these areas. Of the respondents who stated that they had telephoned the company in the proceeding two years, an overwhelming majority of respondents encountered a busy signal when they last attempted to telephone one

⁹ The NCTA standard providing that customer service center and bill payment locations will be open for transactions Monday through Friday during normal business hours with supplemental hours on weekdays and or evenings based on community needs is unworkable, but for other reasons. "Normal business hours" is when many subscribers are at work, and would therefore be unable to visit during those hours.

¹⁰ Consumer Reports, Sept. 1991, at 583.

cable company. Once connected, approximately one-half of the respondents were put on "hold" for longer than one minute.

Accordingly, the Recommended Standards provide that a cable operator's office must be staffed a minimum of 50 hours during the week, with at least nine hours per weekday and five hours per Saturday. In addition, cable operators must provide a local number or toll-free number to be answered 24 hours per day either by staff or by an answering service. In addition, a cable operator should be required to provide emergency referral information on a 24 hour per day basis.¹¹

Several cable operators commenting in this proceeding urge the Commission to require that in order to provide such "supplemental hours," the franchising authority must make a showing of community needs. Such a requirement is inconsistent with basic consumer habits. As one commenter noted, unless there is a community in

¹¹ Local Governments recognize that telephone availability may be the one standard that may be difficult to apply to all cable systems. As several parties stated in their comments, it may not be cost effective for smaller systems to comply with certain requirements regarding telephone availability. Accordingly, for certain telephone standards, it may be appropriate for the Commission to consider modifying those standards for smaller systems. If the Commission decides to provide such a modification, Local Governments urge the Commission to use the definition of "small system" proposed in Local Governments' initial comments in this proceeding, to ensure that such a modification is not abused.

which customers never need service during evening and weekend hours, every community needs additional telephone service hours beyond "normal business hours."¹² The onus must not rest with a franchising authority to ensure that cable subscribers receive a reasonable level of customer service. Instead, it should rest with the party actually providing, and being compensated for providing, the service.

b. Response to Telephone Inquiries: Time

The NCTA standard in this area provides that under normal operating conditions, telephone answer time by a customer service representative, including wait time and the time required to transfer the call, shall not exceed 30 seconds. Those systems which utilize automated answering and distributing equipment are required to limit the number of routine rings to four or fewer. Systems not utilizing automated equipment are to make every effort to answer incoming calls as promptly as the automated systems. The NCTA standards require that the foregoing standard must be met no less than ninety percent of the time, measured on an annual basis.

With respect to the amount of time that cable operators must answer the telephone, the Recommended

¹² See comments of the Attorneys General of Pennsylvania, Massachusetts, New York, Ohio and Texas, dated January 8, 1992 at 7.